In the High Court of Judicature at Madras

Dated : 4.10.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No. 1304 of 2007

Salem Steel Company
No.83, Arcot Road
Rajeswarai Nagar
Porur, Chennai 600 116. .. Appellant/Appellant

Vs

The Commissioner of Income Tax
Chennai. .. Respondent/Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 4.5.2007 made in I.T.A.Nos.1916 /Mds/2005 for the assessment year 2002-03 against the order of the Commissioner of Income Tax (Appeals) IX dated 24.6.2005 in IT/Appeal No.108/2005-06 and against the assessment order of Income Tax officer, Ward I (4) Tambaram dated 31.3.2005 in PAN/GIR.No.AABFS44408.

For Appellant : Mr.T.N.Seetharaman

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY CHITRA VENKATARAMAN,J

The appeal is filed against the order of the Income Tax Appellate Tribunal made in I.T.A.No.1916 /Mds/2005 seeking admission on the following substantial questions of law:-

1. Whether the Appellate Tribunal is right in law in merely upholding the order of the Commissioner of Income Tax (Appeals) without giving any independent reasoning or finding on the issue raised before it ?

2. Whether the Appellate Tribunal is right in law in confirming the addition to Gross Profit without considering the contention that the appellant had furnished its return of

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income for the year based on Books of Account duly audited under Section 44AB of the Act and no defects or omissions were found in the books of Account in the course of the assessment proceedings by the assessing officer ?"

2. The assessee is a partnership firm carrying on business as wholesale dealer in cement. In respect of the assessment year 2002-03, the assessee filed its return admitting total income of Rs.8,62,790/-. A survey under Section 133A of the Act was conducted in the business premises of the assessee on 18.3.2002 just 13 days prior to go for completion of accounts. At the time of survey, it was found that the accounts were maintained in the computer and as against the various entries posted in the computer, primary evidence in the form of vouchers or receipts were not available. Further, it was also stated at the time of survey that an accounting data entry operator was working on the computer, but no accounts were produced before the assessing authority. It is stated that no documents were produced before the assessing authority even on the next day of survey or within a reasonable time of 15 days either in the correct computerised format or manual accounts with relevant primary evidence. Hence, the assessing Officer took the view that the print out of account books were produced only during the assessment proceedings long after the date of survey taking enough time to make convenient entries. It was also found that the assessee was not in the habit of maintaining the statutory accounts in the course of business but conveniently entering into the computer after the close of the year making only necessary entries to suit its convenience. On the face of these facts, the assessing authority found that the Gross profit as per the computer data on the date of survey was nowhere near the profit shown to the department. Considering the same, the assessing authority went in for comparable cases, where the gross profit rate was admitted to be around at 4% to 6% and proceeded to estimate the Gross profit of the assessee at 4% as against the gross profit disclosed by the assessee at 2.77%.

3. Aggrieved by the same, the assessee filed an appeal before the appellate authority, the Commissioner of Income Tax (Appeals), who went into the question of estimation as well as on the maintenance of accounts. The appellate authority found that there was no legal infirmity in the assessment proceedings and that the assessing officer was justified in rejecting the book results and estimating the gross profit at 4% of the turn over as against 2.77% declared by the assessee by placing reliance on the similar comparable cases. The appellate authority found that the gross profit in the case of the appellant worked out to 5.157% and in the case of M/s.MRL Agencies it worked out 5.872% and there

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was difference of .715%. It was found that the contention of the assessee to ignore the aforesaid difference of .715% might not be of much help to the assessee on the ground that the appellant has several advantages over the other comparable cases. In these circumstances, the Commissioner of Income Tax (Appeals) confirmed the order of the assessing authority and thereby dismissed the appeal.

4. The assessee went on further appeal before the Income Tax Appellate Tribunal, who after confirming the order of the Commissioner of Income Tax (Appeals) came to the conclusion that the there was no infirmity in the order of the authorities below and the Commissioner of Income Tax (Appeals) had rightly increased the gross profit by .7.15%. Accordingly the Tribunal dismissed the appeal filed by the assessee. The correctness of the said order is now put in issue before this Court by framing the substantial questions of law as stated above.

5. Learned counsel appearing for the appellant submitted that the Tribunal erred in not dealing with the various grounds raised in the appeal and the arguments advanced at the time of hearing regarding rejection of books of account. He submitted that the Tribunal has not considered the various grounds raised in the appeal in the judicial manner. Learned counsel appearing for the appellant placed reliance on the decision in SOUTH INDIA SURGICAL CO. P. LTD., VS. ASSISTANT COMMISSIONER OF INCOME TAX (263 ITR 5), wherein this Court remanded the matter to the Appellate Tribunal for fresh consideration of the specific issue alone and sought for similar reliefs.

6. We have gone through the judgment of this Court, wherein one of the contentions raised by the assessee was that the Tribunal had not dealt with the specific issue raised in the appeal. This Court after going into the grounds taken in the appeal came to the conclusion that the matter merited remand for fresh consideration by the Tribunal. We do not find any justification to extend the decision to the benefit of the assessee in this case.

7. A perusal of the assessment order clearly shows that the assessing officer had pointed out categorically that the accounts of the assessee had not been maintained regularly and properly supported by basic materials. The survey was conducted in the fag end of the accounting year only to point out that the statutory accounts maintained in the Company were incomplete or not updated for several months. The books of accounts were incomplete. Huge discrepancies were noticed during the survey which remained unexplained. There were no contemporary evidence to support the data produced at the time of survey. Consequently, the assessing

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officer went for comparison of cases similar to that of the assessee and ultimately came to the conclusion that the gross profit admitted by the assessee at 2.77% could not be accepted. The Commissioner of Income Tax (Appeals) found that the difference of .715% has to be added in the gross profit of the assessee on the basis of the comparable cases produced by the assessee and the relative advantage that the assessee enjoyed over others. In the Circumstances, rightly the Tribunal held that there was no infirmity in the order of the Commissioner of Tax (Appeals) in arriving at the gross profit. The Tribunal ultimately upheld the order of the authorities below . Considering the analytical manner, in which the Commissioner of Income Tax (Appeals) has considered the case, the Tribunal rightly confirmed the findings on facts. As the issue involved is one of fact, we do not find any justification to accept the plea of the assessee that the Tribunal had not independently considered the claim of the assessee to pass an order. Considering the nature of the jurisdiction of this Court under Section 260A and there being no question of law arising out of the impugned order of the Tribunal, we do not find any grounds to admit the appeal.

8. For the foregoing reasons, we do not find any reason to entertain the tax case appeal and the same is liable to be dismissed and accordingly the same is dismissed.

Krr/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Registrar, Income-Tax Appellate Tribunal, III Floor, Rajaji Bhavan, Besant Nagar, Madras 90

2.The Income Tax Officer, Ward -1(4), Tambaram

3. The Commissioner of Income Tax (Appeals) IX, Chennai.

4. The Commissioner of Income Tax, Chennai.

+ 1 cc to Mr. T. N. Seesharaman, Advocate SR No. 61947

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SR/6.12.2007

Tax Case (Appeal) No.1304
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